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HAROLD B. WILLEY,

No. 394

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

IN RE: BEN G. LEVY, *Petitioner*

On Writ of Certiorari to The United States Court of Appeals For the Fifth Circuit

BRIEF FOR THE PETITIONER

AIMER ET PENSER: C'EST LA VERITABLE VIE DES ESPRITS—VOLTAIRE

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Opinion Below

The opinion of the Court of Appeals (R. 37-41) is reported at 214 F. 2d 331.

Jurisdiction

The judgment of the Court of Appeals was entered June 23, 1954 (R. 41-42). The Petition was filed during the week of October 5, 1954, and was granted November 22, 1954. The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Questions Presented

The questions presented, in part, reach deeply into the heart of many troublesome facets in American life, particu-

larly in the realm of belief and of advocacy. These questions are whether, on matters of personal belief and of religious worship, the standards have been appropriately applied; and whether, from a perusal of the procedures employed in arriving at the result, there emerges a record that completely negates the standards of procedural due process which have become inseparably encased with "the cherished judicial tradition embodying the basic concepts of fair play".[1]

In other respects, the questions presented display crucial issues of constitutional law. The decree against Petitioner is challenged as illegal because it denies guarantees of free speech, and of liberty embodied in the Bill of Rights and has no reasonable relation to the purpose for which Petitioner was denied admission to practice in the Federal Court. The contention that an applicant shown to be honorable and acceptable for admission may be denied license to practice because of utterances, beliefs and thoughts in which he is protected by the First Amendment, strikes a deadly blow at the "area of allowable thought",[2] and of allowable liberty.

Constitutional Amendments Involved

The constitutional provisions involved are the First Amendment, United States Constitution:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

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[1] **Morgan v. U. S.**, 304 U.S. 1, 22.
[2] **Schneiderman v. U. S.**, 320 U.S. 118, 139.

and the Fifth Amendment, *United States Constitution*:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *."

Statement

Petitioner, aged twenty-six, an honorably discharged veteran of the United States Navy in World War II, a native of New York, but now a citizen of Texas, was a member in good standing of the State Bar of Texas (R. 5). In June, 1953, he applied for admission to the Bar of the United States District Court in Houston, Texas. His application conformed, in every particular, to the Rule covering such cases (R. 2-5).

Acting according to the Rule, the Court referred the application to a Bar Committee of three members (R. 34-35) for "investigation of the fitness, competency, and qualifications of the applicant" (R. 34).

One member of this Bar Committee held *one* interview with Petitioner (R. 7). The other members of this Bar Committee, at *no* time confronted, interrogated, or in any way examined the Petitioner (R. 7). Nevertheless, the Committee, through its Chairman, recommended against Petitioner (R. 5-6). Petitioner excepted to the Committee's report, and was granted a hearing by Judges Kennerly, Hannay and Connally, of the Houston Division, Southern District of Texas (7 ff). These United States Judges approved the Bar Committee's report, and denied Petitioner admission to the Bar of the Federal Court, but without prejudice against his applying again at the end of the one year (R. 34). The basis of the Committee's report, resulting from *one* interview by the Chairman, later approved by the aforesaid Judges, was that Petitioner was associated with an attorney, "who is *generally considered*

to be a member of the Communist Party" (R. 5). The facts developed *in open court* before the three mentioned Judges clearly establish that the "association" was as a low-salaried employee in said office (R. 12). Petitioner had obtained this job as an impecunious young lawyer only after failing (during the present business recession) to find employment in several larger law firms, oil companies, and insurance companies (R. 11). Although such accusation was made against Petitioner's employer by the Chairman of the Bar Committee *alone*, it was never established that such was true, the Bar Committee Chairman stating that he—meaning the employer (*not Petitioner*)—"is *generally considered* to be a member of the Communist Party". "He is regarded as a Communist openingly (sic) and also in publications." His "Communistic views" are "a matter of common knowledge to the Bar and to the newspapers" (R. 6). Petitioner declares again and again (and wishes to be put under oath concerning all he says, R. 19), that *"I am not now and never have been a member of the Communist Party.* I don't believe in using force and violence to overthrow the Government, or to effect social change, and so I could never conceivably be such, a member of the Communist Party" (R. 10, 31). He says, "I would classify my own political views as liberal, for which I make no apologies. I happen to be, as perhaps distinguished from the Chairman of the Committee, an admirer of Franklin Roosevelt. I voted for Harry Truman, and for Adlai Stevenson in the last campaign" (R. 12, 22). He worked in campaign headquarters for Stevenson (R. 20), and attended meetings of the Young Democrats (R. 20). During the hearing in the trial court, he was questioned specifically about membership in various organizations, which revealed that he belonged to *nothing more subversive* than the Young Adult Professional Club at the Y M C A, the Adult Group at the Jewish Community Center, the Young Democrats of Harris County, and

the Emerson Group of the Unitarian Church (R. 20). In college (*City College of New York*) he belonged to the Concert Bureau, the Government and Law Society, and the Franklin Delano Roosevelt Young Democrats (R. 30). When asked if he ever attended Communistic meetings, he told the Court that when he was a student in New York City, he had gone to a student meeting at which the late Congressman Marcantonio spoke (R. 31), but no other such meeting.

Petitioner attends both Temple Emanu El and the First Unitarian Church in Houston, and pledges a part of his income in support of the latter (R. 20). He believes in Divine Guidance (R. 27). He does not "adhere to any orthodox point of view", but, he says, "I believe that there is a Supreme Being, but I wouldn't venture to say what the nature of that Supreme Being is" (R. 33).

Petitioner thinks Franklin Delano Roosevelt was a great man (R. 12), and quotes at length and with approval from Judge Learned Hand and Mr. Justice Douglas (R. 13-20).

From questions by the trial judges it was developed, but apparently, *not* received warmly by the three Judges, that:

(A) Petitioner is interested in Civil Liberties (R. 13, 15, 21);

(B) He thinks Houston is not a liberal-thinking and liberal-voting community (R. 23-24);

(C) He thinks that, if a Communist were on trial, "it is highly unlikely that * * * a jury would be picked that would examine only the evidence produced during the trial, and not preconceptions toward Communists" (R. 28).

The most dreadful thing that Petitioner ever did was to write President Eisenhower asking clemency for the Rosenbergs (R. 21), because he does not believe in capital punishment (R. 24, 29), and thought the death penalty in such case was unprecedented, and not justified by the evidence (R. 21, 26-27). He says: "I am painfully aware that my views on this are probably identical with the majority of Communists; nevertheless, it is not because it is the Communist point of view that I am upholding it, *it is because it is mine*" (R. 24).

The trial court rejected Petitioner's application to practice in the United States Courts.

The Court below (R. 37-41) completely ignored and refused to pass upon the constitutional issues and questions raised. It held, in effect, that Petitioner should recommit his same request to the *same* Bar Committee for a full hearing, *one year later*, as suggested by one of the trial Judges (R. 39-40). Petition for Rehearing (R. 42-45), urging these issues was overruled without written opinion (R. 47).

The lower court in affirming the ruling of the trial court placed undue emphasis on the fact that admission to practice law was a "privilege" (R. 40). The Court below completely disregarded the fact that while admission to practice law is often called a "privilege", it is one which may not be denied arbitrarily or on condition of the "surrender of rights derived from the Constitution" *(Wheeling Steel Corporation v. Glander*, 337 U.S. 562, 571; and *In Re Summers*, 325 U.S. 561, 566). Likewise, the lower court disregarded the unquestioned principle that among the rights not to be surrendered which are appropriate to this matter are those incorporated in Amendments One and Five, of the Constitution of the United States.

Argument

The Argument will be under the following two heads representing the major issues in this cause:

(A) Refusal to grant license to practice in the United States Court upon the evidence reflected by this Record violates due process of law.

(B) Refusal to grant license to practice in the United States Court upon the procedures so employed violates due process of law.

—A—

REFUSAL TO GRANT LICENSE TO PRACTICE IN THE UNITED STATES COURT UPON THE EVIDENCE REFLECTED BY THIS RECORD VIOLATES DUE PROCESS OF LAW.

> "* * * facts do not assess themselves * * * the decisive element is the attitude appropriate for judgment." *(Baumgartner v. U. S.*, 322 U.S. 665, 666-7).

The attitude appropriate for judgment employed by the Courts below is reflected in the sentence:

> "Applicant shall have the right, at any time after the expiration of one year from this date, to again apply for admission to this Bar."

It is respectfully submitted that this does not comport with attitudes appropriate for judgment in this matter.

Since Petitioner is denied admission to practice on the sole basis that he labored for a lawyer who is "imagined" by the Bar Chairman as a Communist, this case assumes a

degree of importance in the realm of constitutional law far greater than that noted in cases involving mere guilt by association. The implications of this decision are that lawyers will have to be careful where they say a thing. They will have to speak two languages, one for the street and the other for the courtroom. There never has been a more absurd principle framed. Its constitutional implications are shocking.

It is a little less than astounding that Petitioner, merely suspected of being *evil* because he worked for a man "imagined" by the Bar Chairman to be a Communist, should, without any evidence, be denied admission to practice and be deprived of the God-given right to earn a living. It is just as astounding that the recommendations of the Bar Committee were not laughed out of Court. We deem it appropriate that an analysis of the evidence be given.

Analysis of the Evidence

I. The Petitioner's Association

1. *What is the nature of Petitioner's alleged association with an alleged Communist?*

Accusation:

> "He is associated with Morris Bogdanow, who is *generally considered*[3] to be a member of the Communist Party" (R. 5).

Facts:

The "association" was as a low salaried employee in the Bogdanow law offices (R. 12). Petitioner obtained this job as impecunious young lawyer only after failing (dur-

[3] Italics in quoted material here and hereafter are supplied.

ing the present business recession) to find employment in several larger law firms, oil companies, and insurance companies (R. 11).

ANALYSIS:

It is a new principle in law that an employee may be held responsible for the deeds and opinions of his employer. Until the three judges announced their decision in the present case, it had been universally held that the direct opposite is the law; that is, that the employer is responsible for the deeds of his employee. This Court is asked to maintain this ancient principle of law, and to set aside the absolutely arbitrary decision of the lower courts which does violence to this ancient legal principle in a manner probably never before perpetrated by any single Federal Judge or group of judges.

2. *Is Morris Bogdanow,*[4] *the Petitioner's "associate", actually a Communist?*

ACCUSATION:

Bogdanow "is *generally considered* to be a member of the Communist Party." "He is *regarded* as a Communist openingly (sic) and also *in publications.*" His "Communistic views" are "a matter of *common knowledge* to the Bar and to the *newspapers*" (R. 5).

FACTS:

A. The grave accusation made by the Bar Committee is obviously based on no concrete fact, but only on pub-

[4] (Bogdanow was admitted to practice in the United States Court of Appeals—Fifth Circuit—on February 17, 1950. He is still enrolled as an attorney in good standing in this Court, **from which Petitioner is excluded).**

lic gossip and irresponsible hearsay. It is the kind of reckless accusation which, *to the shame of this nation in the last few years*, has branded thousands of loyal Americans as Communists. *President Truman, General George Marshall, Justices Frankfurter* and *Douglas* and *Black*, and even *Chief Justice Warren* have repeatedly been "referred to as Communists openly and in publications." It is vaguely alleged that Bogdanow "is generally considered to be a member of the Communist Party." Considered by whom? The only evidence is the unsubstantiated opinion of the Chairman of the Bar Committee, who is himself referred to openly and in publications as an extreme right-wing Republican. This gentleman's views as to what constitutes Communism may well be suspect, particularly in the complete absence of any evidence except what he himself reports as mere gossip.

B. The Chairman of the Bar Committee admits that, in the past, the F. B. I. has been ready enough to inform the Bar Committee whether certain individuals were Communists. But in this case, the F. B. I. "declined" to say that Bogdanow is a Communist (R. 5). The Chairman of the Committee tries to gloss over this failure to secure evidence by "Expressing purely an opinion" (R. 5). But the stubborn fact remains that the only evidence of Bogdanow's alleged Communism is that the Chairman thinks that he "is generally considered" to be a Communist and that "publications" refer to him as such.

ANALYSIS:

A. This kind of loose, unfactual, unverified, hearsay charge, based exclusively on public gossip as interpreted

by an admittedly reactionary character should not be worth a moment's toleration by any rational mind. That three Federal Judges should consider such a charge seriously, and act upon it gravely, shocks one's credulity. Their action can only be regarded as a melancholy commentary on the extremes of panic and hysteria which have lately possessed a people once famous for their courage and hard-headed rationality. This Court is asked *not* to concur in this panic and hysteria, but to exercise its influence to do its part in re-establishing America's traditional heritage of plain and steady common sense. If Bogdanow is a Communist, *it is the Bar Committee's duty*, as it would be the duty of any good American, *to present evidence that will bring him to justice*. Mere slanderous gossip should *not* be admitted or tolerated.

B. Even if Bogdanow were a Communist (and *no* evidence indicates that he is), it is pertinent to point out that the subject of investigation and dispute is *not Bogdanow*, but Levy. Bogdanow's political convictions, whatever they may be, do *not* necessarily have any bearing on Petitioner's political convictions. The fact, for example, that the three Federal Judges who conducted this hearing are "associated" does *not* prove that their political views are identical, or that one approves of the political views of the other. It has *not* been customary in American courts for one man to be held responsible for the crimes (real or imagined) of another. Once again, therefore, the decision rendered in this hearing violates an ancient and well-established principle of American law. This Court is asked to re-assert this almost sacred principle, and not to sanction the Communistic Russian principle that

the friends, relatives, and associates of an alleged criminal must be punished along with the criminal himself. This Court is asked to insist that Ben G. Levy be judged by the *"fitness, competency, and qualifications"* of Ben G. Levy, *not those of Morris Bogdanow.* The Bar Committee itself *did not suggest by so much as a word* that it considered Ben G. Levy to be a Communist, or to have Communistic leanings. The only charge against him was that he was "associated" with a man who is vaguely suspected of being a Communist. If it suspected Levy of being a Communist, *why* did it not say so, and present reasons for saying so? Instead, in violation of fundamental Americanism and in concession to Russianism of the worst sort, it holds Levy responsible for the alleged sins of somebody else. This Court is asked to reassert the ancient Anglo-Saxon and Christian principle that every man shall answer, before the bar of earthly and heavenly justice, for his own sins, and no one else's.

II. The Petitioner Himself

1. *Is Petitioner a Communist?*

Accusation:

In this incredible and unprecedented case, the Bar Committee did not make the slightest suggestion that the Petitioner himself is a Communist (R. 5-6). Instead, the Bar Committee deemed Appellant "unfit, incompetent, and unqualified" only because one of his associates was "generally considered" to have Communistic leanings.

FACTS:

A. Petitioner declares again and again (and wishes to be put under oath concerning all he says, R. 19), that *"I am not now and never have been a member of the Communist Party.* I don't believe in using force and violence to overthrow the Government, or to effect social change, and so I could never conceivably be such, a member of the Communist Party" (R. 10, 31.)

B. The Petitioner says, "I would classify my own political views as liberal, for which I make no apologies. I happen to be, as perhaps distinguished from the Chairman of the Committee, an admirer of Franklin Roosevelt. I voted for Harry Truman, and for Adlai Stevenson in the last campaign" (R. 12, 22). He worked in campaign headquarters for Stevenson (R. 20), and attended meetings of the Young Democrats (R. 20).

C. The Petitioner, on being questioned specifically about membership in certain organizations, revealed that he belonged to nothing more subversive than the Young Adult Professional Club at the YMCA, the Adult Group at the Jewish Community Center, the Young Democrats of Harris County, and the Emerson Club of the Unitarian Church (R. 20-21). In college he belonged to the Concert Bureau, the Government and Law Society, and the F. D. R. Young Democrats (R. 30). Asked if he had made a custom of attending Communist meetings, he said that, when he was a student in New York, he had gone to a student meeting at which Congressman Marcantonio spoke (R. 31), but no other such meeting.

D. Petitioner attends both the Temple Emanu El and the First Unitarian Church in Houston, and has pledged a part of his income in support of the latter (R. 20). He believes in Divine Guidance (R. 27). He does not "adhere to any orthodox religious point of view," but, he says, "I believe that there is a Supreme Being, but I wouldn't venture to say what the nature of that Supreme Being is" (R. 33).

E. He thinks Franklin Roosevelt was a great man (R. 12), and quotes at length and with approval from Judge Learned Hand and Justice Douglas (R. 13-19).

F. From the questioning, the following points were developed, and were, apparently, *not* received warmly by the three judges:

1. Petitioner is interested in Civil Liberties (R. 13, 15, 21).

2. He thinks Houston is not a liberal-thinking and liberal-voting community (R. 23-24).

3. He thinks that, if a Communist were on trial, "it is highly unlikely that * * * a jury would be picked that would examine only the evidence produced during the trial, and not preconceptions toward Communists" (R. 28).

G. Apparently the most dreadful thing the Petitioner ever did was to write the President asking clemency for the Rosenbergs (R. 21). He did this because he does not believe in capital punishment (R. 24, 41), and thought the death penalty in this case was unprecedented, and not justified by the evidence (R. 21,

24-25). His own words indicate something of his honesty and sincerity: "I am painfully aware that my views on this subject are probably identical with the majority of Communists; nevertheless, it is not because it is the Communist point of view that I am upholding it, *it is because it is mine* (R. 24). (In this connection, it might be well to recall that many people, including the Pope in Rome, who *were certainly not Communists* felt as did the Petitioner about the Rosenberg case, and wrote to the President asking for clemency).

ANALYSIS:

Every word the Petitioner uttered in the hearing makes it kindergarten-clear to any intelligent and well-informed mind that the Petitioner is a typical young "liberal"—perhaps idealistic and unrealistic in the opinion of older men hardened by life, but certainly not a Communist and not a disloyal American. In his own words: "My creed is what I conceive to be the American Creed * * * I am opposed to oppressive discrimination in any form. I am opposed to the arbitrary and unwarranted use of power and authority, from whatever source, and against any individual group. I believe in Government by law, not by men, and that the law is above any man, and not any man above the law" (R. 10-11). He is of the stock of that 47 percent of Americans who voted for Adlai Stevenson in 1952, and the 50-odd percent who voted for Franklin Roosevelt repeatedly. He himself sums up his position very accurately: *"My views are somewhat unorthodox in that I believed in the New Deal as Franklin Roosevelt expressed it"* (R. 23). To be sure,

some extreme right-wingers have often declared "openly and in publications" that the New Dealism is Communism. But a Federal Court should know better. This Court is asked to re-assert the right of a man to have a liberal American point of view, to belong to the Democratic Party, to be concerned over the civil liberties of Americans, and to approve of the views of *Franklin Roosevelt, Judge Hand,* and *Justice Douglas* without being penalized by being shut out from a possible means of gaining an honest living. It is true that a small majority of people in America turned away from the Petitioner's type of liberalism in 1952. But belonging to a minority party should not deprive a man of the protection of the Courts against prejudice, whim, and hearsay served up as law and logic.

III. The Three Judges

Some idea concerning the mental horizons of the three judges who decided against Petitioner may be gathered from the direction the hearing assumed under their guidance.

1. Judge Hannay and the Petitioner indulged in an argument as to whether the Republicans or the Democrats carried Houston in 1952 (R. 24).

2. Judge Connally and the Petitioner indulged in an argument as to whether the Supreme Court should review all death sentences (R. 24-25).

3. Judge Connally and the Petitioner argued over whether Houston is an unusually conservative city or not (R. 23).

4. Judge Hannay was apparently perturbed over Petitioner's espousal of the cause of Civil Liberties, and

grilled him several times on that point (R. 20, 21, 24). (The chief point against the Petitioner here was that he was interested in, but not a member of, a group headed by a Professor of Applied Christianity at Princeton Theological Seminary) (R. 22).

5. All three judges asked the Petitioner questions on religious problems that *no man* yet has ever succeeded in solving (R. 32-33).

6. Judge Hannay made the pronouncement: "I believe one evidence of a Communist is the fact that he doesn't believe in a Supreme Being" (R. 32). (Perhaps no less learned statement was ever made from a Federal bench. If Judge Hannay's statement were correct, hundreds of millions of Hindus, Japanese, and Indo-Chinese have been Communists for many thousands of years. "In India the Sankya philosophy, which is one of the great systems of Hindu thought, Buddhism, and Jainism are atheistic, each arguing against an eternal Creator."—*International Encyclopedia*, Vol. II, p. 307. Nor is it recorded that *Darwin, Huxley, Haeckel, Shelley, Thomas Hardy, Joseph Conrad, W. Somerset Maugham*,[5] and a hundred others who might be mentioned were Communists in their atheism).

7. All the judges concurred in declaring that "all applicants carry the burden of showing that their private and personal characters are unexceptional" (R. 50). Once again, there appears here a direct reversal

[5] "I'm glad I don't believe in God. When I look at the misery of the world and its bitterness, I think that no belief can be more ignoble." (A Writer's Notebook, p. 63).

of the spirit of American law. In America a man has customarily been considered honorable until he is proved otherwise. These three judges state deliberately and by implication that they considered the man dishonorable until he proves himself otherwise. This may not be *technical* violation in an informal case of this kind. But it violates the *spirit*—which is an even worse offense. This Court is asked to re-assert an American's inherent and inalienable right to a good name in the courts until it is proved, beyond the shadow of a doubt, that he is undeserving of that good name.

IV. The Unspoken Charge

The Bar Committee's report contained one significant short paragraph buried in the midst of vague innuendos about Communism: "The Petitioner was born and reared in New York and came to Houston a few years ago" (R. 6).—A second point not mentioned anywhere is that the Petitioner is a Jew.

In the absence of all other damaging evidence against the Petitioner, in the absence of any argument that appeals to ordinary reason and common sense, in the presence of a long series of trivialities of gossip, hearsay, and illogic—the question arises:

Was the Petitioner rejected because he was a New York Jew?

No argument can be pressed here, because the charge is unspoken. All that the mind can do is to question, to suspect, and to wonder what the decisions would have been if Jews had been the Judges.

No legal argument, however nice, can obscure the fact that the standards appropriate to the performance of judicial functions in the sensitive area of thought, belief, and advocacy have *not* been maintained in this case. It can hardly be said that this record is one "characteristic of democratic rule". Nor is it a record in conformity with the "amenities that distinguish a free society". We respectfully submit that there is nothing lacking in this mosaic of mischief—unless we wish to regard the Bill of Rights as only a bill of privileges for persons desiring to impose their own opinions on others. These rights are called "the great, the indispensable democratic freedoms" *(Thomas v. Collins,* 323 U.S. 516, 530) because these freedoms (which attach to Petitioner throughout this entire proceeding) are "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society". *Thornhill v. Alabama,* 310 U.S. 88, 103. Through the free use thereof in a free society "the remedial channels of the democratic process remain open and unobstructed". *Minersville School District v. Gobitis,* 310 U.S. 586, 599. The exercise of such freedoms is "vital to the maintenance of democratic institutions". *Schneider v. State,* 308 U.S. 147, 161. "Therein," remarked the late Chief Justice Hughes, "lies the security of the Republic, the very foundation of constitutional government." *De Jonge v. Oregon,* 299 U.S. 353, 365.

The foundation for the Bill of Rights does not admit of a distinction between Democrats and Republicans, Protestants, Catholics, Buddhists, Atheists, or people of different ancestry. The value of thought or of a concept destined to benefit modern society or the possibility of such contributing to the good of the people does not depend on whether

it emanates from a white man or a black man, a Protestant, a Catholic, or a Jew.

This cause takes on no different aspect from any other case in which the Court is put to determining where a claim of freedom ends and the sovereign power begins. *Board of Education v. Barnette*, 319 U.S. 624.

Freedom, that is, of thought and of belief, has a preferred place in our scheme of government; in sooth, it has a "sanctity and a sanction not permitting dubious instructions." *Thomas v. Collins*, 323 U.S. 516, 530. "And it is the character of the right, not of the limitation, which determines what standard governs the choice" (Ibid).

Undoubtedly if Petitioner had been willing to be insincere and answer all the questions put to him in a manner pleasing to the inquirers, he would now be practicing in the United States Courts. But this would have been neither manly nor honest. If he had been so weak-willed as not to protect his own legal and constitutional rights, how could it ever be expected that he should be trusted to protect the rights of a client in any Court?

As matters stand, Petitioner is *penalized for his opinions* and for believing in matters upon which the wisest of men have failed to agree.

The decision of the Committee and affirmance by the Courts below violate elementary notions of justice and fair play, *Hebert v. Louisiana*, 272 U.S. 312, 316-317, in that, among other reasons, the due process defects constitute an *abridgment of the right to free speech* under the First and Fifth Amendments, which find no justification in this Record.

UNCONSTITUTIONAL CONDITIONS

Whether the doctrine of unconstitutional conditions springs from the Constitution itself or from the early cases of *Bank of Augusta v. Earle*, 38 U.S. 519, and *Paul v. Virginia*, 75 U.S. 168, it is clear that to require Petitioner to surrender constitutional safeguards and waive his legal rights for the purpose of practicing in the United States Courts, is against public policy, *Frost and Frost Trucking Co. v. R. R. Com. of California*, 271 U.S. 583, and places an imposition upon Petitioner *not* consistent with principles of natural justice or with the Constitution. This Court in *Thomas v. Collins*, 323 U.S. 516, recognized the problem of Texas requiring Collins to obtain an organizer's card before addressing a mass meeting, as one of "unconstitutional conditions" and reversed the Texas Courts on the grounds of free speech and free assembly. It held that Texas could not condition that Collins first procure an organizer's card before appearing before an assembly to make an address. In a series of cases which discriminated against voting by Negroes, such discrimination was held unconstitutional, then authorized; only for a later decision to reinstate the earlier ruling. *Nixon v. Herndon*, 273 U.S. 536; *Nixon v. Condon*, 286 U.S. 73; *Grovey v. Townsend*, 294 U.S. 699; *Smith v. Allright*, 321 U.S. 667. This is a privilege which the State or Government authority may not condition since Negroes cannot be deprived on "color" grounds of their privilege to vote.

Likewise, the United States Court has power to control, condition, and limit the privilege to practice within its walls. But it has no power to condition the granting of the "privilege" to Petitioner by unconstitutional limitations; such as requiring Petitioner to accept with Promethean constancy elaborate myths that the individual's private opinions must

always agree with those of the majority—that members of the liberal wing of the Democratic Party must not have the privilege of practicing in the United States courts—that to oppose capital punishment is un-American—that to adhere to the principles of the Unitarian Church and the Reformed Jewish Church is to run dangerously close to Communism—that to seek liberation from the tyranny and fear which have gripped America in the McCarthy era is bad Americanism. This Court is respectfully asked to find that a United States District Court may not limit the privilege to practice in the United States Court to just those individuals who believe precisely as some member of a Committee or even as some Judge might view our Constitution and the Bill of Rights. The privilege to practice in such Court may *not* be determined by a judge on the basis that he believes "one evidence of a Communist is the fact that he doesn't believe in a Supreme Being" (R. 32), since,

> " 'In every sense' a judge's religious beliefs should not consciously affect his attitude toward his witnesses or his interpretations of the law." *Ly Shew, Etc. v. John Foster Dulles, Etc.,—C.A. 9—per Denman, J.*, decided December 30, 1954, not yet officially reported.

These cases have peculiar application to Petitioner because, in effect, he is asked to waive his constitutional safeguards and right to speak freely on legitimate issues in order to obtain a license to practice in the United States Courts. One does not waive his rights when applying for admission to the Bar, yet that is what has taken place in this instance under the guise that the Committee and the Courts below are dealing with a "privilege" conferred by the Courts. "Privilege" though it may be, it does not confer unmitigated license to disregard the constitutional mandates extended to Petitioner.

The unconstitutional conditions imposed upon Petitioner may not be enforced, even though the Bar Committee, or the Courts below, decided to withhold that which is regarded merely as a "privilege". *Garner v. Board of Public Works*, 341 U.S. 716, at 725; *Wiemann v. Updegraff*, 344 U.S. 183, 191, 192; *Barsky v. Board of Regents*, 347 U.S. 442.

Since dissent of opinion and intelligent discussion of controversial issues are the foundation of a democratic government, admission to the United States Court should not be refused this Petitioner because of that fact or because it is "imagined" that his employer was a member of the Communist Party, particularly when there is not the slightest evidence to that effect.

Petitioner should not be refused the privilege of practicing in the Federal Courts simply because he may or may not express a philosophical belief, or an opinion, on matters with which the Bar Committee and the Courts below do not agree. Two Justices of this Honorable Court in their hearts and minds felt that the Smith Act ought to have been held unconstitutional, an opinion which was in disagreement with the other members of the Court. Should the members of this great Court who do not see eye to eye with the majority of the members of this great body be penalized because they hold and express different opinions? An affirmative answer not only would constitute an injustice but would seriously impair the intellectual diversity peculiarly needed in the Bar and in our Courts.

Later generations looking at these issues in retrospect may very well come to the conclusion that this generation was overwhelmed by unfounded fears and reacted, as frightened people do, by taking the most drastic measures to obviate

the threat. It is not a denial to the jurisdiction maintained by the other members of this Court to adopt the wisdom of the late Mr. Justice Jackson in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion * * *."

License to practice law may not be denied arbitrarily, or on condition of the "surrender of rights derived from the Constitution of the United States". *Wheeling Steel Corporation v. Glander*, 337 U.S. 562, 571; *In Re Summers*, 325 U.S. 561, 566; *Communications Assn. v. Douds*, 339 U.S. 382.

This decision, in effect, attempts to put all would-be lawyers seeking the right to practice in United States Courts in a certain given mold, and to penalize anyone who does not conform. The mortal danger to our democracy is that it will stop growing. It either grows or dies. There is no such thing as just remaining the same, in one mold, without shaking the very foundation upon which our government is founded. Such a philosophy assumes that our democracy is a "fait accompli" because Jefferson, Washington, and others of our forefathers risked their fortunes and lives to win it, and assumes that it is now our good fortune to enjoy this inheritance. It imposes a doctrine that what is left for us to do is simply to administer property, pocket the profits, and congratulate ourselves on the Fourth of July on the magnificence of our inheritance. This doctrine seems to be that we must maintain the "status quo" at all costs and any young, sensitive mind, such as the Record in this case reveals Petitioner to be, must be denied privileges that he otherwise would enjoy, simply because he does not conform. Such an

attitude cannot help the dynamics of American democracy. This nation became great and is great not in "that we have already created a full living democracy but in that we have created a priceless opportunity to create it."

If he were to submit to the decree of the Court below and wait a year and go back again before the same committee or a different committee bound by this decision, as the committee indeed would be; if he is honest, and indeed he is, he would have to reiterate what he said and lose his chance to practice or be forced to either genuinely abandon his aspirations, or in subterfuge speak words which the committee members like to hear. Petitioner earnestly feels that he cannot and must not do so. To do so would be tragic. Real tragedy occurs not when a man aspires and fails, but when he fails to aspire. The Committee and the Courts below may have been prompted by their zeal to protect freedom, but as President Eisenhower himself stated with good reason:

> "In the very excessive zeal to protect freedom we may destroy it."

We may lose, as he put it:

> "The battle from within that we are trying to win without * * * as we attempt the solution of this great problem of security."

The action of the Bar Committee in laying down a rule that an applicant may not be allowed to practice in the United States Courts if his opinions are not the opinions of the majority not only destroys the diversity which has distinguished the legal profession but confuses dissimilarity of opinion with disloyalty and violates a previous right protected by the Federal Constitution.

Thus, the conditions imposed by the Bar Committee and the Courts below *are as effective a deterrent to thought and speech as direct prohibition would be.* One does not voluntarily waive his right—he is coerced because of the basic importance of the privileges embraced in his economic, social, and personal well-being.

Too often lawyers forget that it is:

> "* * * the noblest faculty of the profession to * * * stand forth on all occasions as the bulwark of private rights against the assault of power, even under the guise of law * * *." *(Sharswood, An Essay on Professional Ethics, American Bar Association Reports,* Vol. 32, pp. 53-54).

This Record is not evidence to support a determination with consequences so grave as here; and, upon it, refusal to grant license to Petitioner to practice in the United States Court may not rest without violent disregard to the Fifth Amendment.

The most famous line in Magna Charta (Article 39) pledges Due Process of law not only for him who is imprisoned or outlawed or exiled, but also for him who is in any other way destroyed. Petitioner has established his fitness for admission to the Federal Bar and his ability to take the oath as one of its members. He should not be excluded for the entertainment of diverse political and philosophical beliefs.

—B—

REFUSAL TO GRANT LICENSE TO PRACTICE IN THE UNITED STATES COURT UPON THE PROCEDURES SO EMPLOYED VIOLATES DUE PROCESS OF LAW.

Matters of substance and of procedure are so intertwined in this matter that it is impossible to ignore one if the other is treated fully. This is made so because of the serious procedural lapses in the Courts below making the procedural defects as important as matters of substance, all of which plainly penalizes Petitioner for the expression of opinions and for the opinions and associations that he is "imagined" to possess.

The inquiry at this point is not whether this aspect or that aspect in the history of the procedure of this case represents the constitutional vice. Rather, it is, on portrayal of the complete procedural history, whether the conclusion which emerges is that of vitiating unfairness, whether the atmosphere enveloping this procedural course is one of unfairness and discrimination of its parts. In substance, did the Bar Committee accredit itself "by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play"? *Morgan v. U. S.*, 304 U.S. 1, 22.

The injustice pierces deeper than the fact that Petitioner has been denied due process because:

A. The hearing before the Bar Committee appointed to pass upon such applicants for admission to practice before the United States Court was wholly inadequate;

B. The Courts below, particularly the hearing in the District Court, failed to supplement or to remedy what had happened (or had not happened) before the Bar Committee;

C. There was relevant evidence that Petitioner wished to give before the full Court—*he even expressed the*

wish to waive all immunities—but he was not permitted to do so;

D. There was positively *no way of knowing that the same results would not occur against Petitioner one year later;*

E. Petitioner could be subjected to successive proceedings with respect to these identical matters.

Basically, whatever may be said of all these points, a procedure which demonstrates all or any part of them cannot survive legal scrutiny.

Whether the guarantee of equal protection is embodied in the due process clause vouchsafed by the Fifth Amendment, it is quite clear that a discriminatory application of legislative or administrative rule "may be so arbitrary and injurious in character as to violate the due process clause of the Fifth Amendment." *Detroit Bank v. U. S.*, 317 U.S. 329, 338.

Consideration of the Bar Chairman's unique method of arriving at the recommendation to the District Court that Petitioner should be rejected adds naught but a black shadow to this chronicle. The Amicus Curiae presentation, in the Court below in adopting the novel approach of the Bar Chairman, demonstrates quite clearly the further pursuit of disregarding concepts of fundamental fairness and, impliedly, at least, refusal to recognize that the Constitution guards against attempts "to wear the accused out by a multitude of cases with accumulated trials", *U. S. ex rel Marcus v. Hess*, 217 U.S. 537, 556.

The incredible argument is pressed by the opposition that Petitioner:

> *"rejected the opportunity to come forward and answer the grave and serious charges against him."*

Certainly, Petitioner was justified in assuming that when his *voluntary offer* to appear before the *whole* Committee (R. 20) was rejected, that there would be no useful purpose served in requesting of the Court that which the Committee denied him. It would be less than human for Petitioner not to be shocked by the grave action of the Committee based on unworthy and wholly inadmissible evidence.

> *"At the beginning of this hearing appellant was afforded a choice of having his application referred back to the Committee* * * * (But) *appellant studiously avoided (this) course which would have resulted in a more thorough investigation being made of him"* (Amicus Curiae Brief below, pp. 11-12; pp. 14, 16, 18).

By inadvertent implication, this argument admits that neither the Bar Committee nor the lower Court made any "thorough investigation" of Petitioner.

It is past the bounds of reason to suppose that Petitioner, having had the experience of the perfunctory investigation of the Bar Committee, and of its unbelievable reliance in rejecting him on the sole grounds of hearsay, gossip, and newspaper talk, would ever again trust the Bar Committee. Could he have reasonably expected justice on a second occasion from a Committee which decided against him, and willing to believe anything evil about him, on the first occasion? *He would have been less than intelligent if he had asked this Bar Committee for a second "investigation".*

> *"The District Court has no duty to accept any applicant until the applicant has shown himself worthy of the honor and public trust"* (Amicus Curiae Brief below, p. 14). *"The burden is on the appellant to prove that he meets all the requirements for admission"* (Amicus Curiae Brief below, p. 17).

This *ex cathedra* statement too easily dismisses "grave and serious" questions involving Constitutional law.

If accepted at face value, the rule summarized in this statement would make it possible for any group of judges to deny a man an honorable means of livelihood by arbitrary decision, without trial, without conviction for any crime or even any fault, but only on hearsay reputation, or for no sound reason at all. Such a procedure violates the letter and the spirit of Due Process. Petitioner contends that, contrary to the argument of the Amicus Curiae below, the District Court *does have a duty* to accept any applicant *unless* the applicant has been shown to be unworthy of the honor and the public trust. If the applicant is shown to be too ignorant to deserve the honor and the public trust, he may be rejected. But *no question was ever raised about this particular applicant's knowledge or wisdom.* Or if the applicant is shown to be normally unworthy of the honor and the public trust, he may be rejected. ***But the only "evidence" ever educed against this particular applicant was hearsay gossip, and newspaper talk.*** No fault in him as been shown.

It is the spirit of the law that a man is held innocent of all offense until he is proved guilty. For a United States Court to require that a man prove himself innocent of every word of gossip, scandal, and whispered attack on his character that has ever been uttered is asking too much of

human nature, and violates every legal principle. It is the duty of the District Court *to assume that the applicant is worthy* of the honor and public trust until it is shown incontrovertibly that he is otherwise. Any variation from this principle is a violation of what is almost the cardinal principle of American law: the right of a man to be regarded as innocent of fault until he is proved guilty.

The law cannot be flouted so flagrantly.

> *"The Committee felt that appellant, with full knowledge of the facts, was associating in the practice of law with a Communist"* (Amicus Curiae Brief below, p. 15).

This assumes as true what is the fundamental point at issue—that Bogdanow, the Petitioner's associate, really was a Communist. Yet no evidence that Bogdanow was a Communist was ever produced; the Petitioner testified before the Court that "His (Bogdanow's) views are *not* Communistic. I have heard him criticize not only the American Government in certain policies, I have heard him criticize the Soviet Government as much as anyone else has criticized the Soviet Government" (R. 13); not even the F.B.I. was willing to say that Bogdanow was a Communist (R. 5); and the only evidence that the Bar Committee itself could find about Bogdanow's alleged Communism was a vague "common knowledge of the Bar" and "newspapers".

In this day when the word "Communist" is applied to any idea unlike that held by the conservative element, when General George Marshall and President Truman have been openly called Communists and traitors, when every American who voted the Democratic ticket in the last twenty-five years *has been accused of treason*—a United States

Court should have some *exact and precise proof* before it gives credence to vague reports that somebody is a "Communist". The word requires exact and precise definition; the Court should not rely on hearsay, gossip, and newspapers. All that can be said certainly of Bogdanow is that "his views are unorthodox" (R. 13). In the opinion of the Bar Committee, these unorthodox views may seem "Communistic"; but the courts should demand more precise definition and information. Vagueness and hearsay are not sufficient basis for decision when the validity and the relevance of American Constitutional law and common law are at stake.

A large portion of the brief of the *Amicus Curiae below* (pp. 15-19) is devoted to the argument that Communists should not be admitted to practice. This point will *not* be argued here. But the *Amicus Curiae must not be permitted to apply this word "Communist" indiscriminately.* The Bar Committee, or rather the Chairman of the Bar Committee, may have the personal privilege of thinking anyone a Communist who is not a McCarthy Republican. But the United States Courts should be more precise in applying the word, and more exact in demanding proof that the application is valid. Hearsay, gossip, and newspaper talk are insufficient.

The argument of the *Amicus Curiae* asserts that Petitioner had "full knowledge of the facts" about Bogdanow's being a Communist. Here again, *the Amicus Curiae below assumes as true what is the fundamental point at issue.*

Is it actually established *as a fact* that Bogdanow was a Communist?

That is one of the main points at issue. The Petitioner is accused of having "full knowledge" of facts about which

nobody seems to have full knowledge—but only hearsay, gossip, and newspaper talk. Again and again, Petitioner declared that he was *not* a Communist and he did *not* think Bogdanow was a Communist. Nothing could be more illogical than this argument, more unjust, or more inimical to the principles of American Constitutional law.

> *"He does not deny that Bogdanow has the general reputation in the community of being a Communist"* (Amicus Curiae Brief below, p. 18).

Petitioner had no occasion to deny this. He was not asked if he knew about Bogdanow's alleged "general reputation"; and he did not say that he knew about it. In the same way, Petitioner did not deny that he had murdered his mother; but by the argument of the *Amicus Curiae below*, Petitioner would be guilty of matricide for not having denied it!

> *"Appellant's willing association with Bogdanow in the practice of law in the face of Bogdanow's general reputation, without making a careful investigation to satisfy himself what the true facts are, indicates a willingness to work for a Communist"* (Amicus Curiae Brief below, p. 16).

(Not being able to prove that Petitioner was a Communist, or that Bogdanow was a Communist, or that Petitioner worked for a Communist, the *Amicus Curiae below is* reduced to arguing about Petitioner's possibly being willing to work for a Communist!)

This argument is directly contrary to fact: (a) There is not the slightest evidence *in this Record* that Bogdanow had a "general reputation" as a Communist—except among the members of the Houston Bar Committee and the vaguely mentioned "newspapers" of Houston. (b) There is *not* the

slightest evidence that the Petitioner had ever heard of this "general reputation" of Bogdanow's—perhaps because Petitioner, being a Democrat who voted for Stevenson and Truman (R. 12), never moved in conservative circles where he could have heard of Bogdanow's "general reputation". (c) Petitioner did declare positively that *he satisfied himself Bogdanow was not a Communist:* "I have had political discussions with him. Surely his views are unorthodox; I am aware of that. *His views are not Communistic*" (R. 13).

In short, there is not a word of truth in this argument of the *Amicus Curiae below.*

There were no charges made against Petitioner which he could be expected to meet and which he would have an opportunity to meet. The findings made by the Bar Committee (meaning the Bar Chairman) as well as the Court were not based on any legal evidence before these bodies. Petitioner was denied the opportunity to present relevant evidence concerning his beliefs and he even expressed, in open court, the wish to waive all immunities, and requested the Court to put all nature of inquiries to him. There were no conclusions of law, either by the courts or the Bar Committee Chairman, which the findings called forth and intended to uphold the results of this matter.

Anyone who cherishes the great Anglo-American tradition of personal liberties sustained by such cases as: *De Jonge v. Oregon,* 299 U.S. 353; *Pierce v. Society of Sisters,* 268 U.S. 510; *Nixon v. Herndon,* 273 U.S. 536; *Fiske v. Kansas,* 274 U.S. 380; *Stromberg v. California,* 283 U.S. 359; *Thornhill v. Alabama,* 310 U.S. 88; *Herndon v. Lowry,* 201 U.S. 242; *Chambers v. Florida,* 309 U.S. 227; *Powell v. Alabama,* 287 U.S. 45; *Near v. Minnesota,* 283 U.S. 697; *Hague v. C. I. O.,* 307 U.S. 496; *Lovell v. Griffin,* 303

U.S. 444—to name only the most familiar, must come to the conclusion that the standards, practices, etc., that apply to administrative and judicial bodies and a Committee set up as an agency of the court to advise it in such matters, have not been respected. No sound reason exists for failure to give the full vigor of the pronouncement of the cited cases to the situation at hand. Not only were considerations of fairness swept aside, the pattern seems to have been to wear Petitioner out with accumulated hearings and, in effect, single "him out for invidious treatment". *Hysler v. Florida*, 315 U.S. 411, 422.

That Petitioner may renew his application "a year later" is no solving phrase. If such were the case, it "would resolve every issue * * * in favor of those in authority and would require us to override every belief thought to weaken or delay execution of their policies". *West Virginia State Board of Education v. Barnette, et al.*, 319 U.S. 624, 636.

> "Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights, it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.
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> "* * * Observance of the limitations of the Constitution will not weaken government in the field appropriate for its exercise." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 636-637.

Only by the teaching of the *Morgan* Cases, 298 U.S. 468; 304 U.S. 1; 313 U.S. 409, only within the scaffolding of the precepts there stated, only on the firm foundation of unyielding fairness, can such procedural structures be safely built.

> "The requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps." *Morgan v. U. S.*, 304 U.S. 1, 20.

Review of the evidence and of the procedural lapses when placed alongside the pronouncements of the *Morgan* Cases, 298 U.S. 468; 304 U.S. 1; 313 U.S. 409, brings to focus more clearly that there was essential unreality in the concept of "fair hearing" as applied to Petitioner. The world in which this decree found its genesis seems to be a world of bewilderment. In such a world of bewilderment, sobriety of judgment does not thrive.

The distinguished Judge Learned Hand tells us that due process "represents a mood rather than a command". The mood of the Bar Committee and the Courts below in rejecting Petitioner's application was anything but cautious. The Record bespeaks the fact that visitations to the untroubled kingdom of Reason were side-tracked and complete reliance placed upon the judgment of a one-man rule in the form of the Bar Chairman. The judgment denies, in effect, that

> "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and *fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. Man being what he is cannot safely be trusted*

*with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of Rights. That a conclusion satisfies one's private conscience does not attest its reliability. * * *. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 171.

"Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural fairness. Due Process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in issuing fundamental justice, it is also a living principle not confined to past instances." *(Ibid,* pp. 173-174).

This Court has, in a long series of decisions, developed a crucial "working principle" for cases in which the scope of constitutional protection of freedom of expression is in issue. That principle is that to justify restriction upon speech or advocacy, nothing less must be shown than that the danger apprehended from the exercise of those rights is imminent.

Justification for such restriction must be affirmative. For "the freedoms of the First Article" occupy "the preferred position" and any fiat infringing upon these freedoms "cannot be sustained by any presumption of validity". *Prince v. Massachusetts,* 321 U.S. 158, 167. It is said that these "freedoms" * * * are to be presumed to be invulnerable and any attempt to sweep (them) away" is "prima facie invalid" *(Ibid,* p. 173).

And, too:

"It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope

of its language the punishment of incidence fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. *Stromberg v. California*, 283 U.S. 359, 369; *Herndon v. Lowry*, 301 U.S. 242, 258.

"A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expression, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech." *Winters v. New York*, 333 U.S. 507, 509-510.

There is no evidence that Petitioner would not demean himself in a manner befitting any honest and sincere gentleman of the Bar. All of the evidence and facts in this case convincingly show that this young man is well-read, has studiously applied himself to numerous subjects, aside from that of law, and, in all probability, could do justice to any client in this or any other court, if given a reasonable time to prepare for such service.

We play truant to striking decisions of our past that have tellingly embodied the persistent tradition that one may not be stripped of his right to earn a living without Due Process of Law. Great moments in our judicial history were they when these utterances were made:

"If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought we hate * * *." [6]

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[6] Justice Holmes, in **United States v. Schwimmer**, 279 U.S. 644, 654-655.

"* * * Under our traditions, beliefs are personal and not a matter of mere association, and men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all its platforms or asserted principles." [7]

Beliefs should not be attributed to Petitioner when the consequences are to deprive him of liberty and the right to earn a living, by imposing upon him, against evidence to the contrary, one version, rather than another.

Freedom, particularly freedom of speech, must be viewed, not as a monopoly of anointed saints, cliques, or powerful regimes;[8] not as an instrument by which the few may awe the many; not as bestowing on one a prerogative which is not enjoyed by all; but as the property of every human being.

Historically, we know of the evils which freedom, when turned into tyranny has inflicted; how it has dug deep dungeons, kindled fires for the martyr, and invented instru-

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[7] Justice Murphy in **Schneiderman v. United States**, 320 U.S. 118, 136.

[8] "I deplore * * *, the putrid state into which our newspapers have passed, and the malignity, the vulgarity, and mendacious spirit of those who write them, * * * These ordures are rapidly depraving the public taste.

"It is, however, an evil for which there is no remedy, our liberty depends on the freedom of the press, and that cannot be remedied without being lost." **(Letter of Thomas Jefferson, Padover,** Democracy, 150-151).

"The time is past in the history of the world when any living man or body of men can be set on a pedestal and decorated with a halo. True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all. The moving waters are full of life and health; only in the still waters are stagnation and death." **(Lincoln Day, 1898, Address of Mr. Justice Brewer, Government by Injunction,** 15 Natl. Corp. Rep. 848-849).

ments of exquisite torture. Intolerance always shelters itself under the garb of some fancy name, and an espionage of bigotry may as effectually close our lips and chill our hearts as an armed and hundred-eyed police.

The power of a United States Court over applicants for admission to practice is exercised so as to preclude undesirable persons who are unworthy of the trust and honor. However, this authority, like any of its powers, must be exercised in a way showing *some reasonable and justifiable relation* between constitutional grants and the purpose for which the authority and power exists.

Time and again, the "reasonable relation doctrine" has been referred to by this Court and is firmly established as a vital principle. It has been applied to determining whether a prima facie presumption brought into being by the Constitution is proper, and whether the conduct sought to be thwarted bears a reasonable relationship to the purpose for which the authority exists. Cases involving presumptions brought into being by statutes, to mention just a few, are: *Bailey v. Alabama*, 219 U.S. 219, 238; *Taylor v. Georgia*, 315 U.S. 25; *Pollock v. Williams*, 322 U.S. 4; and, *Tot v. U. S.*, 319 U.S. 463. Those embracing the application of the rule of reason to substantive statutory and constitutional provisions are: *Cummings v. Missouri*, 4 Wall (U.S.) 277, 319-320; *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535.

The restraints dealt with in the cited cases apply with equal force to proceedings made the basis of this litigation. There must be a *rational relation* between the basis for refusal to admit Petitioner to practice law in the United States Court and the judgment determining the undesirability of an applicant.

Petitioner is denied admission to the United States Court, and is stigmatized in no uncertain terms, not because of the xeistence of any proof of wrongdonig, but because of the "imaginings" of a Bar Chairman, whose written recommendation is adopted by the lower courts. The judgment declaring him unfit to practice in the United States Court is not only without foundation, but is contrary to the constitutional guarantee of free speech and though.

The case of *Cummings v. Missouri,* 4 Wall (U.S.) 277, involving a priest who was convicted for performing his duties without first taking the oath, which he challenged as being invalid, is applicable. This Court held with Cummings, because it was an ex post facto law and because there was no reasonable relation between the requirement of the oath and the purpose for which the State Legislature alone had any right to enact.

The grounds for refusing Petitioner admission to practice in the United States Court embrace thought, speech and conduct vouchsafed by the Bill of Rights and have no *reasonable relation* to the purpose for which judicial authority exists.

Conclusion

The dangers underlying the decision of the Court below require its unalterable rejection.

A. By denying the Petitioner a right to make a living in his chosen profession for no other reason than that he honestly expressed perfectly legitimate opinions that happened not to conform to what a small majority of Americans think, the decision denied, in effect, the Petitioner's constitutional rights to freedom of speech and freedom of religious opinion.

B. By its discriminatory effect, by its assumption that the burden of proving innocence must rest on the Petitioner, by its denial of the Petitioner's constitutional rights in *complete absence* of evidence against him, by its willingness to wear the Petitioner out by subjecting him to repeated examinations and inquisitions, and by its disregard of all reasonable fairness in matters of procedure—this decision violates the letter and the spirit of the Due Process provisions of the Constitution.

If permitted to stand, this decision will operate to curtail the freedom of speech and freedom of thought of all attorneys, and will encourage them to be liars, hypocrites, and cowards instead of honest and courageous servants of the law.

Urgent public interest requires reversal of this judgment.

Respectfully submitted,

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